



AMERICAN CHAMBER OF COMMERCE IN INDIA

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25 Years of India-U.S. Business Partnership

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Shri Shobhana K Pattanayak
Secretary
Department of Agriculture, Cooperation & Farmers Welfare
Krishi Bhavan
Dr. Rajendra Prasad Road
New Delhi - 110001

Dear Mr. Pattanayak,

Greetings from American Chamber of Commerce (AmCham)!

AmCham represents interests of U.S. companies doing business in India and contributing to investment and growth opportunities.

Agriculture is one strong area of mutual cooperation fostering innovation-led growth. However, the recently announced developments on controlling price of crucial inputs such as seeds, crop care formulations and biotechnology traits that are developed after years of R&D investments and focused efforts is worrisome. This would discourage R&D intensive companies from expanding their operations in India.

The recent Draft Notification on Licensing Guidelines and Formats for GM Technology Agreements (for comments and suggestions) under the Cotton Seed Price Control Order, 2015, specifying terms of licensing of GM technologies, present and future were withdrawn and placed as a draft for public consultation. We take this opportunity to submit AmCham's comments and suggestions thereon as follows:

1. The Ministry of Agriculture aims to "encourage competitiveness in the cotton seed market in the interest of and for the benefit of the cotton farmers" through draft licensing guidelines if brought into force. However, a cursory look at the seed industry demonstrates ample competition with close to fifty companies selling hybrid cotton seed with Bt technology. If regulatory approvals are granted to other technologies,

these seed companies will be able to provide more choices to the cotton farmers helping them to use the most appropriate technology. Even otherwise, at present, these cotton seed companies have been granted regulatory approvals to commercialize over 1200 cotton hybrids containing Bt technology and it is reliably learnt that inventory levels maintained by such seed companies is more than adequate to meet the demands of the Indian cotton farmers. The licensing guidelines enforce compulsory licensing of technology bypassing the guidelines in Indian Patents Act (1970), more so without demonstrating the urgency and established criteria that mandate compulsory licensing as per the provisions of Patent Act and in no way enhance competition in the seed industry. The need for more choice and competition in the sphere of Bt genes cannot be resolved by these guidelines; and instead warrant a broad-based thinking by the Government to thoroughly review the regulatory and other policy bottlenecks that will usher in more competition and benefits for the farmers.

2. The draft guidelines takes convoluted position on scope of patents, negates the protection an IP owner is guaranteed under law; overrides existing commercial contracts in agriculture and enforces new licenses to be granted on specified terms. These are highly contrary to the letter and spirit of recently announced National Policy on Intellectual Property Rights. The draft guidelines allude to FRAND mechanism for GM trait without due consideration of multiple criteria and framework of Standard Essential Patents that have evolved over several years of debate in the telecom industry. Any attempt to declare GM traits including the current or future traits commercialized cannot be extrapolated to industry standards owing solely to their popularity and in fact may restrict the choice of technologies that can be offered to the Indian farmer. Additionally, by providing for patented technology to be viewed in the sphere of Plant Variety Protection laws once transferred into a variety and allowing a licensee to freely license a transgenic variety (with a patented technology) creates breach of confidence in the existing well established intellectual property rights system. Thus, such distorted position around intellectual property rights does not augur well for confidence of firms and investors investing in long-term research and development.
3. The draft guidelines put the entire onus of technology transfer within 30 days on the technology provider, completely overlooking the rigor of scientific process, scientific capability of potential licensees. Strong technical ability of a potential licensee to monitor traits and their stewardship are critical for maintaining purity standards of traits and seeds that are so essential to the success of seeds and technology in the farmers' field. Thus the draft guidelines by negating any checks on scientific capability of potential licensees will deviate from achieving the primary purpose of providing access of good quality seeds to the farmers. Technology transfer is best achieved in an environment of trust through bilateral negotiations wherein each party is cognizant of its obligations to each other and to the end-customer through

appropriate quality standards and stewardship; forced transfer of technology will have implications on the quality of products reaching customers and will be a deterrent for the technology provider.

4. It is a matter of deep concern that these draft guidelines determine the tenure of commercial returns on investment in a rapidly depreciating manner overriding protection granted in Indian Patent Act and also ascribe rather arbitrarily commercial value to patented technology. An unprecedented set of provisions for revocation of intellectual property on multiple specious grounds, payment of trait fee linked to "effectiveness of technology" as reported by States and verified by the Indian Council of Agricultural Research (ICAR) and assertions that merely holding patent doesn't entitle a technology provider to collect technology fee etc. These provisions in the guidelines negate the ability of an innovator to predict returns on investment, negotiate prices, terms and contracts for patented technologies and completely commercial freedom. Markets have the propensity to opt out of obsolete and ineffective products and customers readily embrace new and innovative products; the solution in such case for the licensee is to opt out of any technology contract and for the customer is to stop using any "ineffective" product. To continue selling a patented technology incorporated into one's product line and not paying for the technology on the pretext of "ineffectiveness" is fraught with providing incentives for licensees to declare the technology ineffective once obtained. This will deter any technology provider to introduce novel biotechnologies to the market and thus restrict the access of farmers to latest technologies. Indeed, the draft guidelines create a peculiar paradox – on the one hand, they presume that GM traits will lose efficacy within a period which is otherwise not supported by any evidence; on the other hand, by forcibly imposing a reducing rate of fees payable to technology provider(s), they appear to encourage wider use of a presumably failing technology – which can only create more harm than good to Indian farmers.
5. The draft licensing guidelines also grant of mandatory stacking/combining rights of technology from one innovator with any 3rd party's technology by the licensee without any technical oversight by technology developer thus endangering the efficacy of technology and continuing stewardship of existing technologies completely unviable for technology providers. One would assume that the intent of the Ministry of Agriculture is to maximize the benefits of two complimentary technologies with the presumption that technology providers will resist such efforts. On the contrary there are numerous examples of many technology providers including competing entities bringing technologies together through cross-licensing of technologies and stacks. However, these have to be accomplished under rigorous scientific guidance of the scientists who primarily developed the technology after appropriate scientific, IP, stewardship and commercial due diligence to ensure compliance to existing environmental laws, biosafety principles and a robust product that provides intended

benefits to the farmers. If a company wishes to stack technology from multiple technology providers, then it must approach those owners of technology with request, go through regulatory and scientific due-diligence and scientific oversight prior to embarking on any such endeavor. Any deviations from such norms will present enormous risks to effectiveness and longevity of technology.

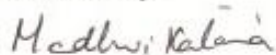
The draft guidelines and the provisions therein send discouraging signals to R&D intensive innovative enterprises and seemingly partisan in putting the burden of expediting research, quick technology transfer, high standards of technology effectiveness in absence of freedom to contract, ability to viably commercialize technology and appropriate technical oversight on transfer and combination of technologies. These guidelines in addition to the above mentioned concerns also undermine well established regime overseeing intellectual property rights (IPR) in the country.

Investments in R&D, innovation and introduction of sustainable solutions to enhance productivity are key to augmenting farmer's income and developing a robust value chain in agriculture. The Licensing Guidelines technologies in their current form will dissuade technology providers to introduce new technologies and restrict the choice of technologies and solutions for farmers in India that are essential to enhance their income.

Such laws create a sense of reluctance on technology transfer and R&D investments, while the Government's focus is to try and build investor confidence; enhance ease of doing business through multiple initiatives and unveiling of the National IPR Policy. Control of commercial freedom and guidelines through Cotton Seed Price Control Order (2015) may set a precedent enabling expropriation of technologies and formulations by companies that do not invest in novel R&D in other innovation based industries such as pharmaceuticals, agrochemicals, medical devices, industrial designs and telecommunications.

May we request you to kindly consider our recommendations and request these guidelines and attendant restrictive policies be completely withdrawn to pave the way for more investments, R&D and new technologies in Agriculture in India. AmCham and its member companies are committed to the development of agriculture and to support farmers in India. We will be happy to engage with the Ministry of Agriculture and Farmers' Welfare in a dialogue towards this noble objective and are available to explain further with supporting documents if desired.

Yours sincerely,



Madhvi Kataria
Deputy Executive Director